



APPROPRIATION ITEMS SUBJECT TO VETO

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This reference document presents guiding principles and statements that may be helpful when examining and analyzing appropriation items vetoed by the Governor. Included also are examples from various Attorney General Opinions illustrating budget items subject to vetoes as well as other examples of budget items that cannot be vetoed by the Governor. Items noted in quotation marks or by double indent were taken verbatim from the Attorney General Opinions referenced at the end of the document.

Legislators may request legal opinions on appropriation items subject to veto from the Attorney General (AG). This document does not purport to represent or replace legal opinions on vetoed appropriation items.

The Michigan Constitution of 1963, Article V, Section 19, grants authority to the Governor to veto certain items in appropriation bills. It states: "The governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void unless re-passed according to the method prescribed for the passage of other bills over the executive veto."

Over the years, there have been numerous Attorney General Opinions and several court cases that have provided further guidance and interpretation regarding budget items that may be vetoed. Based on a review of eight Attorney General Opinions and three court cases, the following guiding principles and statements should be taken into consideration when examining appropriation items subject to the Governor's veto:

- & The Governor has the constitutional authority to ". . . disapprove only distinct items appropriating monies in any appropriation bill. The Governor is not empowered to approve part of an item of appropriation while disapproving on another part of that same item of appropriation"
- & The Governor's veto power is a legislative function not affirmative and creative, but strictly negative and destructive. It cannot be exercised by the executive except through constitutional grant.
- & "Item" when used in reference to an appropriations bill is held to signify a sum of money set aside for a specific purpose. It is not some general provision of law which happens to be put into an appropriations bill.

- & The Constitution does not “confer upon the Governor the power to veto conditions attached by the Legislature to items in an appropriation bill” or “language qualifying an appropriation or directing the methods of its use,” *except when the condition affects a line item appropriation that has been vetoed.*
- & “If the Legislature in an appropriations bill provides that funds for an appropriation be derived from a specific source, the Governor may not veto only the line designating the source.” The Governor has no power to change an essential element of the legislation. The Governor’s veto of a line of an appropriation bill containing a portion of the source of the funds for certain appropriations made in the bill exceeding any line item or total of items of appropriation to be funded thereby would constitute rewriting of the appropriation bill by the Governor.

The remainder of this document provides three sets of examples from Attorney General Opinions which illustrate budget items subject to vetoes and budget items that cannot be vetoed by the Governor.

Attorney General Opinions: Funding Amounts Subject to Veto

The following, taken from Attorney General Opinions, illustrate items subject to veto by the Governor because the funding amounts are clearly ascertainable, and a definite sum of public money has been set aside.

Attorney General Opinion 6955
September 19, 1997

Sections 6(4)(x) and 6(4)(y) of Enrolled HB 4310 of 1997:

- (x) If a district is located wholly on an island and has less than 5.00 full-time equated pupils in membership, the district’s membership shall be considered to be 5.00 full-time equated pupils.
- (y) If a district is located wholly on an island and the district’s membership for 1996-97 was at least 80 but less than 100 full-time equated pupils, the district membership for 1997-98 shall be considered to be 90 full-time equated pupils or the district’s actual 1997-98 membership, whichever is greater.

Attorney General Opinion 6399
November 13, 1986

Section 9(6) of Enrolled SB 712 of 1986:

Included in the appropriation under subsection (1) is \$20,000.00 for a grant to Grand Rapids junior college alternatives to jail programs, modern problems and project intercept classes . . . The college shall submit a quarterly report to the legislature including the capacity of each course, the average daily attendance of each course, the number of students completing each course, the number of students not completing each course, and the reason given for termination. By January 1, 1987, the college shall submit to the legislature a report outlining the course agenda.

Section 33 of Enrolled SB 712 of 1986:

Included in the appropriation in section 1 for the state prison of southern Michigan equipment . . . is \$53,000.00 for communications equipment to establish compatibility between local fire departments and the prison control center for fire suppression activities. The state prison of southern Michigan may provide the communications equipment to Blackman or other local township fire departments as part of their cooperative agreement for fire protection, provided the local fire departments agree to maintain and service the communications equipment during the period the equipment is loaned.

Section 73 of Enrolled HB 5396 of 1986:

Of the \$5,505,400.00 appropriated in section 1 for public access sites, \$12,000.00 shall be expended on the hard surfacing of the access road to the waterways public access site on Craig Lake in Branch County. The \$12,000.00 shall not be expended unless local and private funds are available to complete the hard surfacing road project.

Section 42 of Enrolled HB 5389 of 1986:

Of the amount appropriated in section 1 for the department of commerce, Michigan promotion program, \$500,000.00 shall be allocated for the Michigan molecular institute.

Attorney General Opinions: Conditions on Appropriations Not Subject to Veto

The following, taken from Attorney General Opinions, illustrate items not subject to veto by the Governor because no moneys are appropriated or set aside for a stated purpose, and the language is only a condition upon an appropriation in which the line item appropriation itself has not been vetoed.

**Attorney General Opinion 6955
September 19, 1997**

Section 6(4) of Enrolled HB 4310 of 1997:

"Membership", except as otherwise provided in this act, means for a district, public school academy, university school, or intermediate district the sum of the product of .6 times the number of full-time equated pupils in grades K to 12 actually enrolled and in regular daily attendance on the pupil membership count day for the current school year, plus the product of .4 times the final audited count from the supplemental count day for the immediately preceding school year, as determined by the department and calculated by adding the number of pupils registered for attendance plus pupils received by transfer and minus pupils lost as defined by rules promulgated by the state board, and as corrected by a subsequent department audit.

**Attorney General Opinion 6684
June 11, 1991**

Section 402(1)(d), (2), (3), and (4) of Enrolled SB 51 of 1991:

(d) The department shall submit to the senate and house appropriations subcommittees on corrections and the senate and house fiscal agencies the department's planned

allocation of the funds from the PREP account for fiscal 1990-91 not later than April 1, 1991.

- (2) The PREP advisory committee established under section 901(2) of Act No. 324 of the Public Acts of 1988 shall continue to develop guidelines and procedures. The department shall report at the end of each quarter the progress of the PREP advisory committee to the senate and house subcommittees on appropriations and the fiscal agencies.
- (3) The department, in cooperation with the senate and house fiscal agencies, shall develop a comprehensive reporting format and shall submit an executive summary of the report to the department of management and budget, the senate and house appropriations subcommittees on corrections, and the senate and house fiscal agencies within 30 days after the end of each term, semester, or quarter. Detailed information summarizing each 2-year and 4-year postsecondary educational program, including the capacity of each course, the number of students graduating from each postsecondary degree course, average class hours attended per student, the number of students not completing each course and an explanation of why the student did not complete the course, the number of students awarded a degree or certificate for course work completed, the actual cost per scheduled class hour, and the cost per hour in attendance shall be made available to the senate and house appropriations subcommittees on corrections and the senate and house fiscal agencies upon request.
- (4) Department staff working in cooperation with department of education staff shall conduct an assessment of the effectiveness of the 2-way interactive program. The project assessment shall include, but not be limited to, evaluation of the effectiveness of the 2-way program associated with statewide correctional facility implementation. The department shall report to the senate and house appropriations subcommittees on corrections and the senate and house fiscal agencies by May 1, 1991.

Attorney General Opinion 6399
November 13, 1986

Section 30 of Enrolled SB 712 of 1986:

Preference is to be given to local community based firms when the department has reason to expend amounts appropriated under section 1 for health care, food services, or other goods and services outside the department . . . Of the estimated \$4,000,000.00 appropriated in section 1 for a secure health care unit, preference is to be given to a local community for such health care service.

Section 41(2), (3), and (4) of Enrolled HB 5388 of 1986:

- (2) It is the intent of the legislature that beginning October 1, 1987, the department of state shall confer historical site preservation grants only if all of the following criteria are met:
 - (a) The object of the grant has a historical significance to this state.
 - (b) The grant is for a 1-time restoration, preservation, or maintenance project.
 - (c) The grant does not exceed \$50,000.00.

- (3) The federal funds appropriated in section 1 for the historic site preservation grants shall not lapse at the end of the fiscal year but shall continue to be available for expenditure until the projects for which the funds were reserved have been completed or are terminated.
- (4) Prior to the disbursement of a warrant by the secretary of state, a task force comprised of a person designated by the senate majority leader, the speaker of the house, and an appointee of the governor shall review the purpose of the grant. The secretary of state and the director of the department of commerce shall serve as ex officio members of the task force.

Attorney General Opinions: Conditions on Appropriations Subject to Veto

The following, taken from Attorney General Opinions, illustrate conditions upon a line item that could be vetoed since the individual line item appropriation was also vetoed.

Attorney General Opinion 6684

June 11, 1991

Section 404 of Enrolled SB 51 of 1991:

- (1) Included in section 101 is funding for the prisoner education tutor program. The department shall provide eligible prisoner tutors with orientation training and education staff with training regarding how to make the most efficient and effective use of prisoner tutors in the classroom.
- (2) The pay scale for the prisoner education tutor program shall compensate prisoner tutors on a pay scale commensurate with MSI's entry level base wage structure. The department shall submit to the senate and house appropriations subcommittees on corrections and the senate and house fiscal agencies the department's planned allocation of the money and the number of prisoner tutors by facility for fiscal year 1990-91 no later than April 1, 1991.

Section 411 of Enrolled SB 51 of 1991:

- (1) Included in the appropriation under section 101 is \$337,200.00 for the initial development and implementation of the PPROMIS project.
- (2) The department shall report on the progress of the PPROMIS project at the end of each quarter to the senate and house appropriations subcommittees on corrections and the senate and house fiscal agencies.

Section 412 of Enrolled SB 51 of 1991:

- (1) Included in the appropriation in section 101 is \$998,700.00 for the specialized probation caseload pilot project for substance abuse mental health and repeat offenders using the intensive supervision standard of 30-35:1 average work units per agent. The 4 units established are projected to supervise and divert a total of 720 offenders annually. For maximum efficiency, these units will be located in areas where there is a high level of prison commitments and a concentration of offenders with the special characteristics.

- (2) Included in section 101 is 393,600.00 for 9 more existing probation units in other areas of the state projected to divert an additional 270 offenders annually.
- (3) The department shall develop a cooperative plan with the office of community corrections for the purchase of support services for probationers determined to be diversions involved in specialized probation caseloads.
- (4) The department and office of community corrections shall submit a progress report on the implementation of the project including the allocation of funding and services purchased at the end of each quarter.

Reference Materials:

Attorney General Opinion 6955, September 19, 1997

Attorney General Opinion 6684, June 11, 1991

Attorney General Opinion 6557, January 12, 1989

Attorney General Opinion 6399, November 13, 1986

Attorney General Opinion 6102, August 31, 1982

Attorney General Opinion 5852, February 23, 1981

Attorney General Opinion 5478, April 4, 1979

Attorney General Opinion 3435, July 9, 1959

Oakland County Commissioner v. Oakland County Executive, 98 Mich App 639, 651 (1980)

Stadle v. Township of Battle Creek, 346 Mich 64, 69 (1956)

Wood v. State Administrative Board, 255 Mich 220 (1931)